

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,

Plaintiff,

V.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., and SAMSUNG SEMICONDUCTOR,
INC.,

Defendants.

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CIVIL ACTION NO. 2:21-CV-00463-JRG

ORDER

Before the Court is Plaintiff Netlist, Inc.’s (“Netlist”) Opposed Motion to Withdraw Dkt. 563 (the “Motion to Withdraw”). (Dkt. No. 602.) In the Motion, Netlist moves to withdraw its Motion for an Ongoing Royalty (the “Royalty Motion”) (Dkt. No. 563) without waiving its right to seek an ongoing royalty following the resolution of all Federal Circuit appeals regarding the IPRs impacting the asserted patents in this case. (*Id.*)


Samsung does not oppose Netlist withdrawing the Royalty Motion. (Dkt. No. 603.) However, Samsung opposes Netlist's request for permission to refile the Royalty Motion should the Federal Circuit reverse or vacate the PTAB's unpatentability determinations. (*Id.*; Dkt. No. 572.) Samsung argues that the Court should not grant Netlist permission to refile its Royalty Motion at a later date for the same reasons that it raised in its original opposition to Netlist's Royalty Motion. (Dkt. No. 603.) Specifically, Samsung contends the original Royalty Motion is untimely and procedurally improper, and any later refiling would likewise be untimely and procedurally improper. (*Id.* at 2.) Samsung further contends that the Court should reserve judgment

on the issue until after the parallel C.D. Cal. case is resolved (i.e., after the jury's verdict in favor of Netlist is appealed to the Ninth Circuit). (*Id.*)

The Court finds that Netlist should be permitted to withdraw its Royalty Motion without prejudice as to refiling the same. As Samsung has said, "Samsung agrees that Netlist's Motion for an Ongoing Royalty . . . should be withdrawn." (*Id.* at 2.) Further, Samsung does not articulate any opposition to Netlist refiling the motion at a later date beyond those it has already raised in opposition to the original Royalty Motion. The Court granting Netlist's motion without prejudice should not be construed as the Court deciding the issues raised by Samsung concerning the procedural propriety of the original Royalty Motion or any refiling of the same. If Netlist refiles its motion after the Federal Circuit appeals are resolved, Samsung may likewise re-urge its procedural arguments as it did in opposition to Netlist's original Royalty Motion. There is no prejudice to Samsung.

Based on the foregoing reasons, the Court finds that Netlist's Motion to Withdraw (Dkt. No. 602) should be and hereby is **GRANTED**. Accordingly, Netlist's Motion for an Ongoing Royalty (Dkt. No. 563) is hereby **WITHDRAWN**. Netlist is permitted to refile its Motion for Ongoing Royalty (Dkt. No. 563) no later than ten (10) days following the resolution of all Federal Circuit appeals concerning the asserted patents, if those decisions leave this issue alive and open.

So ORDERED and SIGNED this 12th day of July, 2024.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE